

ANNUAL REPORT
PANEL OF MEDIATORS

Fiscal Year 2010

The following report is submitted pursuant to 26 M.R.S.A. § 965(2)(E) (Supp. 2009).

The primary function of the Panel of Mediators is to assist bargaining agents, who represent public employees at all levels of government and education in Maine, and public employers to successfully negotiate initial or successor collective bargaining agreements. This process is called interest mediation and it entails a State mediator persuading the parties to alter their positions sufficiently to permit agreement. The Panel also has authority to engage in interest mediation pursuant to the Agricultural Marketing and Bargaining Law, 13 M.R.S.A. § 1953, et seq. (2005 and Supp. 2009), and to participate in helping resolve private sector collective bargaining disputes.

The number of new interest mediation requests received this fiscal year increased significantly from the total for the preceding year; there were 64 new requests compared with 39 in FY 2009 and 40 in FY 2008. During the last fifteen years, the number of new interest mediation filings per year ranged from the low of 39 in FY 2009 to a high of 74 filings in FY 1997. The numerical average number of mediation requests received per year over the last 15 years (including this year) is 60 new filings per year. In addition to the new mediation requests received during the fiscal year just ended, there were 16 matters carried over from FY 2009 that required some form of mediation activity during the year. Last year, 16 matters were carried over from FY 2008. Thus, the total number of mediation matters requiring the Panel's attention in this fiscal year totaled 80, up from 55 during the previous fiscal year. In the uncertain economy of the early 2000's, most parties negotiated only one-year agreements, hoping that the situation would stabilize or improve sufficiently the next year to permit more productive negotiations at that time. Beginning late in calendar year 2006, parties began returning to the practice of negotiating multi-year agreements. Since most public sector agreements must have a term of no longer than 3 years, one might have anticipated increased demand for mediation this year. In addition, given the scarcity of resources required to meet demands, mediation was sought this year in localities where no intervention has been required in many years.

The higher level of mediation activity this year was undoubtedly the result of the continuing economic downturn. Faced with increasing costs, particularly soaring energy costs, increases in the cost of health care, and declining revenues the previous year, many public employers sought to re-open current agreements or to negotiate no-change successor agreements, in efforts to avoid employee layoffs. In response, many bargaining agents agreed to re-openers or to contracts that continued current wages and benefits for their duration. With continued uncertainty in the national economy, parties have returned to the practice of negotiating multi-year agreements to provide predictability in the terms and conditions of employment.

Mediation is recorded as a single request, even when it involves multiple bargaining units of a single employer. For example, one filing this year was for 4 units; 3 units were involved in each of three other filings. In such situations, the mediator undoubtedly expends substantial periods of time on issues particular to individual bargaining units, making the mediation process longer and more complicated. In total, 90 bargaining units were involved in mediation this year.

The following table reflects the Panel's rate of success over the past several years:

Fiscal Year	Settlement Rate
1996	66.2%
1997	82.1%
1998	82.3%
1999	73.91%
2000	80.7%
2001	85.94%
2002	76%
2003	83.1%
2004	86.8%
2005	88.5%
2006	77.8%
2007	84.9%
2008	87.5%

2009	72.1%
Fiscal Year	Settlement Rate
2010	82.0%

Fiscal issues, particularly health insurance financing and general wage adjustments, were the most significant issues to resolve in Maine public sector negotiations this year. Job security provisions, including issues relating to sub-contracting unit work and reductions-in-force, were at issue in several mediations this year. Anecdotal evidence from Panel members indicates that, while mutual respect between negotiating parties is always important in reaching settlements, such shared attitude is particularly important in difficult times. A shared feeling that "were all in this together, so let's find a way to get through it," results in an atmosphere of cooperation, enhancing the likelihood of settlement. On the other hand, an attitude, expressed or implied, that one party sees the circumstances as an opportunity to force concessions that the other party would not otherwise agree to, results in acrimonious negotiations and increases in the transactional cost of the process for both parties.

The Panel received a request for services this year pursuant to the Agricultural Marketing and Bargaining Law for a dispute between the Agricultural Bargaining Council and McCain Foods U.S.A., involving approximately one-half of the Maine potato crop. State Mediator David Bustin met with the parties for the 3 consecutive days of mandatory mediation. Although the mediation did not result in an agreement, it did help the parties to narrow their differences and served to clarify their respective positions. Consistent with long-standing practice, the MLRB worked with the Department of Agriculture to supply the parties with a list of arbitrators, from which they selected the person who issued a decision in the case.

Several years ago, members of the Panel of Mediators received instruction by the U.S. Department of Labor in interest-based bargaining techniques. Starting in FY 1996, State mediators have offered non-confrontational bargaining services to the public sector labor-management community upon the joint request of the parties. In the 62 instances where this problem-solving "preventive mediation" approach has been used, 60 settlements resulted (96.8% settlement rate). This year, we did not receive any requests for preventive mediation services.

Since both new filings and cases carried over from prior years contributed to the actual workload of the Panel in the course of the 12-month period, we have reported settlement figures that represent all matters in which mediation activity has been completed during the reporting period. In calculating the settlement rate, only those matters where the mediator was actively involved in the settlement are considered as having been successful. Although parties who reach agreement after concluding formal mediation often credit the mediator's efforts as having been instrumental in resolving the dispute, the degree to which mediation contributed to the settlement is too speculative for such cases to constitute settlements for reporting purposes. Likewise, cases in which a request for mediation was filed but in which the parties settled their differences prior to participating in mediation are not included in the settlement rate.

The distribution of the Panel's caseload, according to the statute pursuant to which referrals were made over the last several years, is as follows:

Fiscal Year	New Cases Referred	Cases Referred Under State, University and Judicial Acts	Cases Referred Under Municipal Act, inc. County and Turnpike Authority Referrals	Private Sector Referrals	Agricultural Marketing Act
1996	69	5	64	0	0
1997	74	12	60	2	0
1998	68	2	66	0	0
1999	69	3	66	0	0
2000	73	6	67	0	0
2001	61	6	55	0	0
2002	54	3	50	0	1
2003	64	8	55	0	1
2004	65	2	63	0	0
2005	55	1	54	0	0
2006	58	4	34	0	1
2007	47	4	43	0	0
2008	40	2	38	0	0
2009	39	2	37	0	0
2010	65	3	61	0	1

The requests for services received in the last two years involved the following employee organizations:

	<u>2010</u>	<u>2009</u>
Maine Education Association/NEA ¹	28	13
Teamsters Union Local 340	18	9
AFSCME Council 93	9	6
International Association of Fire Fighters	4	2
Maine Association of Police	2	3
Maine State Troopers Association	2	0
Maine State Employees Association	1	5
International Association of Machinists	0	1

The overall level of demand for public sector interest mediation increased by 64% this year. Requests in the municipal sector, including counties and utility districts rose 41%, while those in K-12 education doubled (100% increase). All sectors experienced the fiscal impact of the great recession; however, bargaining activity in the school sector was suppressed last year due to the uncertainty regarding the future of the K-12 reorganization initiative which was resolved by the voters in November and by the Legislature in their First Regular Session of the biennium.

The average number of mediation-days per case increased substantially from 2.74 in FY 2009 to 4.07 for the combined total of 41 matters, including carryovers, for which mediation was concluded. The maximum mediation days devoted to a single case this fiscal year was 14. Of the 41 cases in which mediation was concluded this year, 51.2% were resolved in 3 days or less (8 cases were resolved in one day, 6 were resolved in two days and 7 were resolved in three days).

The figures for the past fifteen-year period are summarized below:

Fiscal Year	Mediation-Days Expenditure Per Case*
1996	3.20 (3.20)
1997	3.76 (3.25)
1998	2.84 (2.27)

¹While reference is made to the Maine Education Association, the Maine Association of Police or International Association of Fire Fighters for the sake of simplicity, the various activities described were undertaken by local associations which are affiliated with each of the larger state-wide or national employee organizations.

1999	3.46 (3.47)
2000	4.19 (4.02)
Fiscal Year	Mediation-Days Expenditure Per Case*
2001	3.89 (3.60)
2002	3.86 (3.60)
2003	3.46 (3.14)
2004	4.16 (4.22)
2005	3.89 (3.86)
2006	3.01 (2.80)
2007	5.42 (5.45)
2008	2.65 (3.65)
2009	2.74 (2.70)
2010	4.07 (4.07)

*In order to assist in comparing the number of mediation-days per case over a multi-year period, we have included the number of mediation-days per case in traditional mediations within parentheses in the above table for the years during which preventive mediation services were provided. There were no preventive mediation cases this year.

Of the mediations, including carryovers, that were concluded in FY 2010, 9.75% proceeded to fact finding. The percentage of cases proceeding to requests for fact finding after mediation in each of the past several years is indicated in the following chart:

Fiscal Year	Percentage of Cases Proceeding to Fact Finding*
1996	30.99%
1997	15.94%
1998	14.71%
1999	30.43%
2000	14.04%
2001	9.375%
2002	20%
2003	13.8% (38.5%)

2004	8.8% (19.11%)
2005	5.8 (25%)
Fiscal Year	Percentage of Cases Proceeding to Fact Finding
2006	13.9% (20.8%)
2007	12% (26%)
2008	7.5% (17.5%)
2009	7.7% (16.3%)
2010	9.75 (21.9%)

*Prior to FY 2003, all post-mediation fact-finding requests were included, whether later dismissed, withdrawn or settled prior to hearing. This was somewhat inaccurate because the mediator continues to work with the parties after the fact-finding request has been filed and, in many instances, settlement is achieved in mediation before the fact-finding proceeding is ever held. We have included the former calculation in parentheses in the chart for comparison purposes with prior years.

Assuming the average of 4.07 mediation-days per case, the 36 matters still pending will consume an additional 147 mediation-days, for a total expenditure of approximately 314 mediation-days devoted to matters docketed in or carried over to FY 2010.

Despite their good faith, parties can, and often do, disagree over the meaning and intent of collective bargaining agreement provisions they have negotiated. The resulting disputes are resolved through the contractual grievance procedure, which usually culminates in final, binding arbitration. In 2001, the Legislature amended 26 M.R.S.A. § 965 (2)(F) to permit members of the Panel to assist parties in resolving grievance disputes, if the parties had so agreed. Parties are invariably more satisfied with results they have negotiated than with those imposed by a third party. Five requests for grievance mediation services were received this year, resulting in the resolution of 4 disputes and the remaining request was resolved by the parties prior to mediation. The use of grievance mediation is a positive development in public sector collective bargaining, helping parties to resolve grievances expeditiously and avoiding the expense and delay inherent in arbitration.

Members of the Panel of Mediators during the past fiscal year were:

John Alfano

Biddeford

David Bustin
Maria Fox
Robert L. Lyman
James Mackie
Sheila Mayberry
Charles A. Morrison
John M. Norris
Don Ziegenbein

Hallowell
Portland
Freeport
South Portland
Cape Elizabeth
Auburn
Carrabassett Valley
Bangor

Mediation continues to be the cornerstone of public sector collective bargaining in Maine. Practitioners in the labor relations community have come to accept and value the process and the expertise and competence of members of the Panel. The members of the Panel have gained practical experience and insights that are invaluable in the effective use of this tool. The Panel's reputation and expertise, coupled with a growing awareness of alternative dispute resolution in our society, are likely to result in continued demand for the Panel's services in the future.

Dated at Augusta, Maine, this 30th day of June 2010.

Respectfully submitted,

Marc P. Ayotte
Executive Director
Panel of Mediators and
Maine Labor Relations Board